

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34001

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 607
	)	
Plaintiff-Respondent,	)	Filed: August 19, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
TYLER A. WAGNER,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Charles W. Hosack, District Judge.

Appeal from order denying I.C.R. 35 motion for reduction of sentence, dismissed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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PER CURIAM

Tyler A. Wagner pled guilty to delivery of a controlled substance. I.C. § 37-2732(a). The district court sentenced Wagner to a unified term of five years, with a minimum period of confinement of one and one-half years. The district court suspended the sentence and placed Wagner on probation. Wagner thereafter violated the terms of his probation, and the district court revoked probation, but retained jurisdiction. The district court relinquished jurisdiction and ordered execution of the previously suspended sentence. Wagner filed an I.C.R. 35 motion, which the district court denied. Wagner appeals. The state contends that the district court lacked jurisdiction to rule on the motion.

If a trial court fails to rule upon a Rule 35 motion within a reasonable time after the time limit within which to file the motion under the rule, the trial court loses jurisdiction. *State v. Chapman*, 121 Idaho 351, 354, 825 P.2d 74, 77 (1992). The Idaho Supreme Court explained that this requirement that the trial court act on a Rule 35 motion within a reasonable time is necessary

to prevent the court from usurping the responsibilities of parole officials. *Id.* at 355, 825 P.2d at 78. *See also State v. Tranmer*, 135 Idaho 614, 617-18, 21 P.3d 936, 939-40 (Ct. App. 2001).

When a Rule 35 motion for reduction of sentence has been filed, the defendant's attorney carries the burden of precipitating action on the motion within a reasonable time or otherwise providing adequate justification for a delay. *State v. Bromgard*, 139 Idaho 375, 380, 79 P.3d 734, 739 (Ct. App. 2003); *State v. Day*, 131 Idaho 184, 186, 953 P.2d 624, 626 (Ct. App. 1998). Failure to do so creates the risk that the trial court will lose jurisdiction to consider the motion. *Id.* This Court has held that a significant period of delay is unreasonable, leading to a loss of jurisdiction, where the record is silent as to a viable basis for the delay. *See State v. Payan*, 132 Idaho 614, 619, 977 P.2d 228, 233 (Ct. App. 1998); *State v. Simpson*, 131 Idaho 196, 198, 953 P.2d 636, 638 (Ct. App. 1998); *Day*, 131 Idaho at 186, 953 P.2d at 626; *State v. Maggard*, 126 Idaho 477, 479, 886 P.2d 782, 784 (Ct. App. 1994).

Wagner filed his Rule 35 motion for reduction of the sentences on February 21, 2006. The motion was made as a plea for leniency and to correct an excessive sentence. The motion explained that "written comments are being gathered for submission to the Court, with the submission expected not later than mid-March." Nothing happened until January 16, 2007, when Wagner filed a motion to allow telephonic conference at a hearing scheduled for February 2, 2007. On January 31, Wagner submitted letters in support of his Rule 35 motion. Ultimately, a hearing was held on February 2, and the district court entered an order denying Wagner's Rule 35 motion.

Under these facts, we are constrained to conclude that the district court lost jurisdiction to rule on the motions before the hearing was even scheduled. No explanation was proffered by for the inactivity between the last day for the filing of the motion, February 21, 2006, and the initial scheduling of the hearing on the motions for February 2, 2007, a delay of nearly one year. Defense counsel bears the burden of precipitating action on a Rule 35 motion within a reasonable time or otherwise providing adequate justification for a delay. *Bromgard*, 139 Idaho at 380, 79 P.3d at 739. Here, defense counsel proffered no viable justification for the delay. We therefore hold that the period of the delay was unreasonable and caused the district court to lose jurisdiction to rule on the motion. The appeal from the district court's order denying Wagner's Rule 35 relief is, therefore, dismissed.